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Supreme Court of the United States

OCTOBER TERM 1902.

No. 49

Office Supreme Court U. S.
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JAMES H. McKENNEY,
Clerk.

TOLTEC RANCH COMPANY, Plaintiff in Error,

vs.

WILLIAM BABCOCK AND LOUISA BABCOCK,
Defendants.

BRIEF OF DEFENDANTS.

B. H. JONES,

Attorney for Defendants

upreme Court of the United S tates

OCTOBER TERM 1903

No. 317.

T OLTEC RANCH COMPANY, Plaintiff in Error.

vs.

ILLIAM BABCOCK AND LOUISA BABCOCK, Defendants.

BRIEF OF DEFENDANTS.

In this case the defendents relied upon the Statute of Limitations of the State of Utah as a complete defense. The defendants established their defense under the Statutes of Limitations and proved that adverse possession for a period exceeding thirty years had operated to transfer the plaintiff in error's title. No federal question is presented by this record and the defendants therefore ask that this case be dismissed.

"It is a mistake to suppose that every suit for real estate, * * * necessarily raises a question of federal cognizance.

"If this were so the title to all the vast domain,

once vested in the United States, could be brought from the State courts to this tribunal."

Carpenter vs. Williams 9 Wal. 785.

No question is raised in this record as to the validity or operative effect of an Act of Congress, the defense was the statute of limitations and the transfer of the title to the defendants.

McStay vs. Friedman 2 Otto 723.

Rowie vs. Casanova 1 Otto 379.

"The construction given by the courts of the several states to the legislative acts of those states, is received as true, unless they come in conflict with the constitution, laws, or treaties of the United States."

Elmendorf vs. Taylor et al 10 Wheat 153.

In this case the plaintiff in error admitted that the defendant "and her predecessors in interest, have held and occupied the premises mentioned exclusively for more than thirty years since her entry upon the same in 1867." (Abs. 5.) The recital indeed shows that the Central Pacific Railroad Co. mortgaged this land Oct. 1st 1870.(Abs. 51.) One of the government corners were found in 1870 and it was then determined by the settlers which was railroad lands and which was government lands. (Abs. 23.) Loveland offered to purchase this land in July 1st, 1876, and its boundaries are defined in this offer. (Abs. 58)

The record shows that there was a withdrawel

of all the odd sections between Wyoming and Monument point to take effect May 15, 1862. (Abs. 61.) Such withdrawel is evidence that the definite location had preceded it.

Newhall vs. Sanger 92 U. S 762.

Moffatt vs. United States 112 U. S. 30.

The recitals in the patent showed that the line of the railroad from Ogden to Sacramento had been constructed and fully completed and equipped prior to Nov. 3rd, 1869. (Abs. 53.)

The title to the lands in dispute vested in the C. P Railroad Co. by virtue of the Pacific Railroad grants. That it was a grant in presenti and that the title vested upon that date has been settled by this court. It is no longer an open question.

No one but the Government can raise the lien question.

"That a grant may be made by a law as well as a patent pursuant to a law has been settled by the repeated decisions of this court."

Ryan vs. Carter 3 Otto 78.

Langdeau vs. Hanes 21 Wall. 521

"If the claim be to land with defined boundaries, or CAPABLE OF IDENTIFICATION, the legislative confirmation perfects the title to the particular tract, and a subsequent patent is only documentary evidence of that title."

Langdeau vs Hanes 21 Wall. 521.

"When the route of the road was definitely fixed

(Oct. 20th, 1868.) the sections granted became SUSCEPTABLE OF IDENTIFICATION, and the title then attached as of the date of the grant."

Salt Co. vs. Tarpey 142 U. S. 241.

In this case the legal title to the land was granted by act of Congress, the title was as effectively divested as it would be by the issuance of a patent therefor by the executive department and on th 20th day of Oct., 1868, it became subject to the statute of limitations and an adverse possession thereof from Oct. 20th, 1868, to Oct. 20th, 1875, ripened into a legal title in favor of the adverse possessor and an adverse possession from Oct 20th, 1868, to Oct. 20th, 1888, raised a conclusive presumption of a private grant in favor of the defendants. The effect of this adverse possession cannot be defeated by the subsequent issuance of a patent.

Ever since the definite location of this railroad ejectment suits have been brought upon the legal title to the land granted by the Pacific Railroad Acts without regarding the patent.

Coriune Mill Canal & Stock Co. vs. Johnson. 156 U. S. 574

Deseret Salt Co. vs. Tarpey 142 U. S. 241.

Tarpey vs. Madsen 178 U. S. 215.

In the latter case a patent had been issued to the defendant a homestead settler. The flaw in the settlers title as appears from the latter case is the fact that the settlers dated their settlement prior to the

withdrawal of the lands instead of prior to the definite location. So that, as a matter of history, it is safe to say that the only title to all the lands covered by the cities and towns and homestead and pre-emption claims in Utah between Wyoming and Nevada is that which arises by virtue of the statute of limitations.

See also: Forrester vs. Scott 92 Cal. 398.

Jatunn vs. Smith 95 Cal. 154.

S. P. R. R. Co. vs. Whitaker 109 Cal. 268.

This action for the land in dispute was commenced before the issuance of a patent.

It appeared from the verified answer (Abs. 4 & 6) that the property had been held and possessed adversely to such legal title for thirty-two years before the commencement of the action. So under section 2861 Revised Statutes of Utah 1898 the burden of proof was on the plaintiff in error.

Tyler on Ejectment 867.

Green vs. Hawkins 19 How. 69.

There is not a scintilla of evidence in this case showing an ouster, or an entry, or seizin or possession in plaintiff or its grantors since Oct. 20th, 1868, as required by section 2859 Revised Statutes of Utah of 1898.

U. S. vs. Chaves 159 U. S. 452.

U. S vs. Devereaux 90 Fed. Rep. 182.

Respectfully submitted;

B. H. JONES,

Attorney for the Defendants.